

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 3

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Chapter 4, Subchapter 7, Article 3, Section 3251
of the General Industry Safety Orders

Refrigerator Vehicles**SUMMARY**

The Occupational Safety and Health Standards Board (Board) received a memorandum dated December 18, 2000 with attachments from the Division of Occupational Safety and Health (Division) requesting the Board to modify Section 3251, which applies to refrigerated compartments on trucks or trailers. Section 3249 of the General Industry Safety Orders requires that a fire axe be kept inside a fixed cold storage room so that employees trapped inside by a door frozen shut can batter their way out. There is an exception to that regulation, which allows administrators of correctional facilities or psychiatric hospitals to forego providing a fire axe if supervisory personnel are continually on duty and there are administrative procedures in place to prevent employees from being closed inside a cold storage room. This exception exists because the fire axe in these facilities presents a greater hazard to correctional officers or hospital attendants than the lack of a fire axe does to inmates working in a cold room. The Division's request was initiated following a telephone discussion with an administrator of a high-security prison facility.

Section 3251 applies to refrigerated compartments on trucks or trailers and requires that an axe, pinch bar or other tool be kept inside the unit. However, this Section has no exception for correctional facilities and psychiatric hospitals. The Division recommended Section 3251 be modified by adding an exception that closely resembles the exception for correctional facilities and psychiatric hospitals that already exists in Section 3249.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

To rectify the problem discussed above, Board Staff agrees with the Division's recommendation to add an exception to Section 3251 similar to the exception that already exists in Section 3249.

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forego providing the fire axe if supervisory personnel are continually on duty and there are administrative procedures in place to prevent employees from being closed inside a cold storage room.

Section 3251. Refrigerator Vehicles.

This section requires employers to provide a suitable fire axe, pinch bar or other tool in mobile, vehicular refrigerated compartments that would enable a person to escape in case the door should freeze tight or accidentally close trapping the worker inside the compartment.

The exception is necessary to eliminate the fire axe, pinch bar or other tool requirement and the hazard to correctional officers or hospital attendants should the fire axe or tool fall into the wrong hands. The proposed revision is necessary to ensure that the axe, pinch bar or other tool could not be used as a deadly weapon against the refrigerator truck driver or other institutional personnel.

DOCUMENTS RELIED UPON

Memorandum from John Howard, Chief, Division of Occupational Safety and Health, to the Standards Board dated December 18, 2000 with attachment.

This document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All employers – state, local and private – will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.